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Texas General Land Office reports

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Biennial report of the Commissioner of the General Land Office of the State of Texas,
<1st (1847)>

Report of the Commissioner of the General Land Office, <1856-'57>

FIRST BIENNIAL

FOR THE YEAR 1870

OF THE

COMMISSIONER OF THE GENERAL LAND OFFICE

C7 922

STATE OF TEXAS.

PRINTED AT THE "DEMOCRAT" OFFICE.

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REPORT, &c.

GENERAL LAND OFFICE, }
State of Texas, Dec. 1847. }

His Excellency, the Governor,

J PINCKNEY HENDERSON,

and the Honorable Legislature.

GENTLEMEN.—In accordance with the usages of the country, I herewith submit for your consideration a report, containing a few remarks upon the Land System; the Commissioner, believing it unnecessary to enter into very lengthy details in this report, inasmuch as he has heretofore in his reports pointed out most of the principal defects of the system, and at a time when it might have been good policy to have remedied such defects; but at this time, the Commissioner of the General Land Office would not advise much change, as the citizens of the country have learned its details. Whereas, a very material change in our Land System would at this time, cause much error and great confusion, without producing an adequate benefit, having progressed so far with the present, although bad system, as to make any extensive alteration almost impossible, which would harmonize with the present interests of the people, wherefore, the Commissioner will confine himself to merely such points as require amendment, together with an expose of the business done in the General Land Office since the adjournment of the last Legislature.

The first and most important subject is the necessity of procuring a suitable building for the archives of the General Land Office. The building at present in use, is very much dilapidated, and being constructed of the most inflammable material of wood, is not a safe receptacle of such valuable records to the citizens of the country of all classes. The present office is not only dangerous, from the inflammable material of which it is constructed, but is rendered more unsafe by adjoining houses, built of like material, owned by private individuals, who rent their property for the largest price, regardless of the great liability there is to fire by the occupancy of the houses by transient persons; and such is the dilapidated state of the buildings adjoining the General Land Office, that none will rent them but transient persons; if even the buildings were of a good class, but of the same kind of material, the archives are yet unsafe, as the history of this place

for, the last few years will prove; the best and finest of the buildings have been destroyed by fire and by accident; wherefore, I have no doubt that the Legislature will see the importance as I do, of procuring a suitable fire proof building for the records of the General Land Office. Should the present building be burnt as other buildings have been in the city of Austin, it would then be too late to recommend or provide. The cost of a good brick building with stone or brick floors, slate roof and iron window frames and shutters would not be more than \$15,000.

With a view to the sale of the public domain, it becomes necessary to close, at an early day, the location of the claims derived under the present and prior laws of this country. It is well known that a large surplus domain will belong to the State after all her land liabilities are paid, but it cannot be ascertained what the surplus public domain is, until all the present liabilities are located, and the surveys returned to the General Land Office. I would, therefore suggest, that a period of three or four years should be fixed upon, for all persons entitled to lands of this Government, to locate and have their claims surveyed and their field notes, certificates and warrants lodged in the General Land Office. Persons who have located, or who may locate lands, should be required to have the land surveyed and the field notes deposited in the General Land Office within a specified time, or forfeit the location, as many persons have taken advantage of the present laws and have held land simply by location to evade the payment of taxes. Much injury has been done, and much more it is feared will be done to the resident citizens of this country, by the want of some law for their protection against the old Spanish and Mexican grants, the existence of which has not been made known to this Government: wherefore, many of our citizens have located lands, believing them to be public and unappropriated domain—not only have they located, but they have bestowed upon it their labor for several years, and have made extensive improvements, believing the fee to the land to be fully vested in them by their location and survey, and very often by a patent which they may have received from this Government. Many titles, of which the existence has heretofore in this country been unknown, have been filed and registered in this office within the last year, nearly all which, together with most of the old grants which have been registered in this office several years since, have the Government dues been unpaid thereon. If the grants are legal, surely some means should be adopted to enforce the payment of dues. Few of the ten and eleven league grants purchased of the State of Coahuila and Texas, have been paid for.

The Commissioner of the General Land Office most earnestly entreats the Governor and Honorable Legislature to view the

effects of the law which authorizes suits to be instituted against the officers of Government by mandamus. The ill effects of that law are very apparent to the Commissioner, and he herewith submits one or two cases to elucidate his meaning, as follows:

Wherever a controversy has arisen between two citizens as to the right of either to a certain piece of land, both of whom have had the land surveyed and then respective field notes filed in the General Land Office, the field notes of either bearing the same date, and the right, so far as the Commissioner can judge, being equal; he therefore, neither espouses the cause of one party or the other, but refuses to give a patent to either, until between themselves they settle their controversy; but one of the parties obtains a writ of mandamus, which is made peremptory, because the Commissioner sets up no claim in behalf of the State; the other party acts in like manner, and the consequence is, that two patents to different persons are issued to the same land.

A suit was brought by writ of mandamus against the Commissioner of the General Land Office, requiring him to issue a patent upon a survey made by the surveyors of San Patricio county, the land being in a disputed territory, claimed by the surveyors both of San Patricio and Bexar counties, and being surveyed by the surveyors of both these counties, upon entries made by persons in each county. The result was, that in consequence of the State having no interest in the land in controversy, and not being able to ascertain from the inaccurate surveying done in these two counties, or one of them, the identical claim with which there was a conflict, the mandamus was made peremptory, without deciding whether the party was legally entitled to a patent in that territory, in preference to those who located in Bexar county; upon the other side, if the persons who had their surveys made by the surveyors of Bexar, should bring suit in the same manner, the decision of the court must also be the same; thereby causing the State to issue two or more patents for the same land, whereby the character of our titles is much impaired.

It became the duty of the Com. of the Gen. Land Office in the year 1841, to report to the Congress of the Republic of Texas, a fraud of great magnitude, embracing in its character the crime of forgery, committed upon the Republic by false and forged reports having been deposited in the General Land Office, purporting to have been the result of the labors of the Commissioners appointed to detect fraudulent land certificates, in their examination of the acts of the board of Land Commissioners of Jasper county, which reports contained an excess of claims, amounting to seventy six leagues and twenty four labors more than the Commissioners have recommended. It again, by the force of circumstances, becomes the duty of the Commissioner to lay the whole matter before the Legislature, inasmuch as a suit is now pend-

ing in the District Court of Travis county, for the purpose of compelling the Commissioner of the General Land Office to issue a patent upon one of the above named seventy six leagues, &c. the certificate having been certified to by the former clerk of the board of Land Commissioners of Jasper county, as having been approved by the Commissioners appointed to detect fraudulent land certificates, the name of the said Clerk having also been signed to the fraudulent reports.

The suit now instituted, being brought by a person who was very conspicuous in forcing one of the fraudulent reports above referred to, into the General Land Office, which the following letters &c., will more clearly show:

GENERAL LAND OFFICE, }
Austin, Feb 9th, 1841. }

M. B. LEWIS, Esq.

Dear Sir,—Enclosed you will find a copy of the returns of the examining board of Commissioners from your county. From information had in the office, I am induced to believe that some error has crept into the report filed here; in some instances, the quantity of land is not correct, in others, there are names which have not passed the board of Commissioners. Wherefore, I would request of you as a favor, that you would examine the enclosed report with the original, and make such corrections as are proper, and advise the General Land Office, as soon as possible.

If you will read the twelfth section of the "act to detect fraudulent land certificates &c.," you will find upon carefully examining the same, that the Commissioners should make their returns to the General Land Office, with their proper signatures attached thereto, which in my opinion, would be the only true way of detecting frauds, as the law did not contemplate that any Commissioner or Clerk who sat on the board before, should act on this unless as auxiliaries. You will, therefore, procure as many signatures of the board appointed to detect &c., to the returns as you possibly can.

With much regard, I remain your obd't. serv't.

THOS. WM. WARD,
Com'r. Gen'l. Land Office.

P. S. I would further remark, that you having been elected County Surveyor, it will be necessary to forward your bond to the State Department, before you can be recognized as such.

GENERAL LAND OFFICE, }
Austin, April 1st, 1841. }

HON. M. B. LEWIS,

Chief Justice Jasper County:

Sir,—By Mr. Huling, member from Jasper, I forwarded a

copy of the returns of the examining Board of Land Commissioners for said county, for comparison with the original records of the county. I was induced to do this in consequence of information having been lodged at this office, that a portion of the names inserted on said return, was done without the authority of the examining board. You will oblige me by comparing the copy sent, and inform me if any difference exists, or forward a duplicate as soon as possible, as daily applications are being made for patents to land surveyed by authority of certificates said to have been fraudulently inserted in the return now on file in this office.

I am very respectfully, your most obd't. serv't.

THOS. WM. WARD,
Com'r. Gen'l. Land Office.

JASPER COUNTY, August 16th, 1841.

THOS WM. WARD, Esq. :

Sir,—Accompanying you have a true copy of the original records of the Board of Travelling Commissioners, exactly such a document as I forwarded to you by Mr. George W. Glascock, about the first day of May last, with this exception; the signature of the Sheriff of the county, was first on the one mislaid, which I forwarded by Glascock. But, sir, to my great astonishment, you forwarded by Col. Espy, a document purporting to have been forwarded by me to your office, which document, God knows to be as base a piece of forgery as ever escaped the pen of a forging villian. Glascock told me, that you told him, to say to me, that he would probably be the shortest and safest conveyance. I forwarded them by Glascock, believing it to be a safe conveyance. I also, forwarded other documents by him. He wrote to me from Washington on the Brazos, that he had mailed my documents at that place, owing to his travelling so slow. Hence it is, if Glascock is not one of the party of the certificate forgers of our county, or has not taken a bribe from them, there is something wrong in some of the post offices at Washington city or Austin, or between the two places. Accompanying, you have a copy of a letter which accompanied the documents which I forwarded by Glascock; as well as a copy of the resolutions of a committee of the people. I am sorry to say that it looks strange, that Glascock should mail part of the documents I forwarded by him and retain part. Such appears to be the fact from your letter to me, that my bond as County Surveyor, has been handed into the office of Secretary of State by Glascock. I gave him the bond, the same time that I gave him the other documents. There is as few certificate forgers in this county of Jasper, as probably any county in the Republic, but what we have, are of the

first character. I forward this document as an experiment. I have just such another ready, which I will forward by a private conveyance.

I am sir, with respect, your ob'dt. servt.

M. B. LEWIS, *Chief Justice.*

N. B. Please let me know if you received a package of field notes, at the same time you received the forged document. I forwarded a package by Glasscock.

Respectfully, M. B. L.

A copy of a letter forwarded by George W. Glasscock.

JASPER COUNTY, April 24th, 1841.

To HON. THOS. WM. WARD,

Commissioner Gen'l. Land Office:

Sir,—Accompanying you have a true copy of the original record of the examining Board of Commissioners for Jasper county, bearing date 26th June, A. D. 1840. It was not convenient to obtain the original signatures of the Examining Commissioners, except one (Gideon J. Goode,) whose certificate you will see accompanying. But sir, in order to give all possible evidence of the corrections of the accompanying copy, I have obtained the official certificates of all the principal officers of this county, which I hope will be satisfactory.

I am sir, with regard, your ob'dt. serv't.

M. B. LEWIS, *Chief Justice J. C.*

N. B. This letter is a copy, so far as wrote on the subject of a copy of the records of the board of travelling Commissioners.

Respectfully, M. B. L.

ZAVILLA, JASPER COUNTY, August 17th, 1841.

THOMAS WM. WARD Esq.,

Commissioner of General Land Office:

Sir,—Agreeably to your instructions, I conveyed the returns entrusted to me to the proper person. Upon comparing the last return purporting to have been made by M. B. Lewis, it was ascertained to have been a forgery beyond a doubt. A meeting of the people was called, and it was unanimously resolved by the largest concourse of citizens ever met in this county, that a true copy of the record should be made out and forwarded to your department,—a copy to be sent by mail, and one by private conveyance, so that you should receive one genuine return from our county at least, and at last. It is now hoped, that this return sent this day by mail, under lock and key will arrive safe, and be

amply satisfactory, legal and in just train for legal claimants to get their patents from this day henceforth, without any difficulty.

I have the honor to remain your ob'dt. serv't.

THOS. H. ESPY.

WHEREAS, there has been a true copy of the original record of the Board of Travelling Commissioners, made out and certified to officially, by A. J. Isaacs, Sheriff, H. Good, Clerk District Court, under seal, C. K. Blanchard, Clerk of County Court under seal, Gideon J. Goode, former County Commissioner of the Examining Board, and M. B. Lewis, Chief Justice, under seal of office, which was forwarded to the Commissioner of the General Land Office, by what was considered a safe conveyance, which was *suppressed*, and a *forged document*, with sundry leagues and labors of land inserted, more than was in the correct one, made its way into the Gen'l. Land Office, with the signature of the Chief Justice of our county *forged*, and with the seal of the County Court: Therefore, We, a Committee, chosen by the good people of Jasper county, at the court house in the town of Jasper, the 3d day of August, 1841, to wit: M. B. Lewis, Chairman, T. B. Huehng, Edward Good, John A. Smith, Thos. H. Espy, Hardy Pace, Wm. McMahan, Josiah Stevenson, E. W. Harper, Britton Hall, James Thomason, N. H. Cochran, Andrew J. Isaacs, Caleb Burnester, Secretary, for the purpose of taking into consideration the numerous frauds practiced upon the rights of our citizens and the Republic, by the frequent attempts to introduce into the General Land Office, false or forged documents, purporting to have originated in this county, as well as purporting to be a true copy of the original records of the Board of Travelling Commissioners; also, to devise some means, or to adopt some measures that will secure peace and confidence at home, and give to our slandered people character abroad, do in the name of the worthy and law abiding citizens of our county, adopt the following Resolution:

Resolved, 1st, That two correct copies of the original record of the Board of Travelling Commissioners be made out and certified to officially, by as many of the principal officers of our county as may be convenient, and that the Chairman of this committee be authorized to appoint a suitable committee to copy the aforesaid record, and also, a suitable committee to convey one copy to the Commissioner of the Gen'l Land Office at the city of Austin, and also to forward one copy of said record by mail, and to take the receipt of the post master for the same.

Resolved; That a sufficient sum of money be raised, by voluntary contributions, to defray the expenses of the committee bearing the document mentioned in the preceding resolutions to the city of Austin, and that the individual bearing them, shall be required to give a receipt for the same, and take them under a pledge of his honor, that they will be delivered safely into the hands of the proper officers of the General Land Office, unless providentially prevented.

Resolved, That a copy of these resolutions and preamble accompanying, be forwarded to the General Land Office, with the aforesaid documents; and the committee bearing the same shall be despatched as soon as possible.

Whereupon, the committee adjourned until Monday following, 9th August.

Attest, CALEB BURNISTER, Secy.

Made out under the provisions of the above resolutions, and copied this 17th day of August, in Zavalla, by

THOS. H. ESPY.

JASPER COUNTY, Oct. 26th, 1841.

CORR. GEN'L. LAND OFFICE:

Sir,—Yours of Sept. 8th, has been received, which afforded much pleasure to the citizens of this county, to know that all was right in the Gen'l Land Office. In accordance with the resolutions of the committee, I forward by the Hon. Robert A. Pennell, the other copy of the records of the Board of Travelling Commissioners, with sundry unconditional head-right certificates enclosed.

I am Sir, with the highest respect, your most obdt servt.

M. B. LEWIS, *Chief Justice.*

The object of the Commissioner of the General Land Office in thus troubling the Legislature with this expose, is to show the necessity of employing a Counsellor to represent the State in such suits as may be brought against it, under the law authorising suits to be instituted against the officers of Government by mandamus. At present it is not the duty of either the District Attorney or the Attorney General, to defend the State in such suits as may be brought against it in the District Court, under the law above referred to. For should it be considered the duty of the District Attorney to attend to such suits, much more labor would devolve upon him whose District the Seat of Government is in, than upon any other District Attorney of the State, and so numerous and important are the suits now pending in the District Court against the State, that the interest of the State would war-

rant the employment of the best counsellor, who should be required to reside at the Seat of Government. To take into consideration the costs which the State has to pay for suits, which in many instances it has no interest in, the Commissioner of the General Land Office does not hesitate to say, that the State would save money by the appointment of a Counsellor, although a liberal salary were allowed.

Notwithstanding the difficulties under which this office has labored by the resignation of the clerks, at the time of the adjournment of the last Legislature, and the consequent delay occasioned by selecting and instructing others in their several duties, together with much delay in procuring a supply of patents, this office has issued six thousand four hundred and twenty nine patents since the meeting of the last Legislature. The Commissioner has much satisfaction in saying that the business done in the General Land Office the past two years, has given to those persons who have had business with it general satisfaction, chiefly owing to the ability and attention of the Clerks, and the more than usual stability of the laws; as leave without alteration the district boundaries, cannot be too fully impressed upon the minds of the honorable Legislature. Hencefore, when the Surveyors' bounds were governed by the annual change of county boundaries, great and almost inremediable confusion was the result. Now, it is pleasing to notice, that instead of increasing confusion, many of the former difficulties and clashing of Surveys are adjusted.

Although much effort has been made to obtain a map of the district of Red River, yet, up to the present time, all our efforts have been futile, owing chiefly to the great inaccuracy of the surveying, and want of connection in the surveys; but it is expected through the energy and perseverance of the person now engaged in the compilation of that map, that something may be effected, which will enable the State to give a tolerable description of the land which may be patented. Although all the other districts have maps in this office, many of them are so very incorrect, that it is impossible to add the surveys of the present day to them, and many of the surveys which were made previous to, and since the compilation of the maps. To remedy this evil, the Commissioner is satisfied, there is but one correct course to be adopted, which is the employment of competent persons by the State to compile maps of the several districts. In consequence of the small salary allowed to the Draftsman of this office, a gentleman who had discharged the duties of that office for the last four years was compelled to resign, the salary not being sufficient for the ordinary support of his family, by which the State has suffered a great inconvenience: the place is yet vacant, although

efforts have been made to procure a person of proper qualifications to fill it. The appropriation which was made by the last Legislature for postage, is not one half expended. That for the payment of Land Scrip surveys has been insufficient. The amount appropriated for the contingent expenses of this office has been insufficient, the Commissioner having been compelled out of his own resources, to furnish fire-wood, portage and many other necessities. In consequence of the last Legislature failing to make an appropriation for the payment of district maps, &c., this office has been much retarded in its business. Much inconvenience arises to persons having business with this office, through the neglect of several of the Clerks of the Boards of Land Commissioners, in consequence of their not forwarding reports of the business of their respective boards. There are sixteen counties from which this office has not as yet received any report; wherefore, persons who have procured certificates from them cannot obtain their patents until the reports are made.

In the contracts made for colonizing parts of the country, a clause has been inserted to reserve each alternate section from settlement by the colonists and, as a doubt has arisen in the mind of many citizens as to whether the alternate sections are reserved for the sole use of the State, or, whether they are a part of the unappropriated and public domain, subject to be located by the citizens, I would most respectfully advise an expression of the will of the Legislature by the enactment of a law, stating definitely whether they are subject to location or not, inasmuch as some persons are locating those alternate sections; whereas, many wish to locate them, but fear to do so.

The attention of the Legislative bodies of the country has been heretofore directed to a material defect in our patenting system but as the subject has been passed over without action, the Commissioner conceives it his duty, again to lay the subject before the Legislature. Many persons having procured head-right certificates, bounty land warrants, and purchased scrip of the Government, located them and deposited the surveys in the General Land Office, upon which patents have been made, and bear a subsequent to the decease of the person to whom the certificate, warrant or scrip was granted, which in law is considered void as no grant can be made to the dead. Wherefore, it becomes necessary to legalize by statute what has been done, and convey the right to the heirs or legal owners, and to provide for such cases in future.

I have the honor to be your very obd't. serv't.